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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

GP-303630

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on

9-16-09

Signature

Mary Aiello

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Mary Aiello

Application Number

10/701,143

Filed

November 4, 2003

First Named Inventor

Steven W. Holland

Art Unit

2192

Examiner

Ben C. Wang

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/95)

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Registration number if acting under 37 CFR 1.34



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September 16, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

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*Total of _____ forms are submitted.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/701,143
Filing Date: November 4, 2003
Applicant: Steven W. Holland
Group Art Unit: 2192
Examiner: Ben Wang
Title: LOW COST OPEN APPROACH FOR VEHICLE
SOFTWARE INSTALLATION/UPDATING AND ON-
BOARD DIAGNOSTICS
Attorney Docket: GP-303630

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request a Pre-Appeal Brief Conference in response to clear legal and factual deficiencies in the Final Office Action mailed June 3, 2009. Applicant reserves the right to address additional matters in any subsequent appeal brief.

OUTSTANDING REJECTION

Claims 22-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2003/0167345 ("Knight") in view of U.S. Pat. No. 6,892,216 ("Coburn").

FIRST FACTUAL DEFICIENCY

Neither Knight nor Coburn teaches or suggests "multiple vehicle processors... each adapted to generate diagnostic information indicating success of software

installation on the respective vehicle processor,” where an interface processor “transmit[s] diagnostic information received from the multiple vehicle processors to [a] portable memory device,” as claim 22 recites.

The Examiner does not assert that Knight teaches or suggests these limitations, and instead relies on Coburn.

In Coburn, a common platform 120 (which the Examiner asserts is analogous to the interface processor of claim 22) provides an interface between a host computer 110 and equipment sensors 130 (see FIG. 2). When a new type of sensor is connected as one of the equipment sensors 130, the common platform 120 may need to update its software to correctly interpret information from the new type of sensor. In order for the common platform to identify which sensors are connected, the equipment sensors 130 may provide identification codes to the common platform 120.

Therefore, instead of determining software installation success on **multiple vehicle processors** connected to an interface processor, as in claim 22, Coburn teaches updating software only of the **interface processor itself** (common platform 120). Software on the common platform 120 is updated to allow the common platform 120 to interact with different equipment sensors. See col. 6, lines 26-27 and 35-36.

The Examiner refers to col. 7, lines 34-47 of Coburn, which disclose that the common platform 120 determines whether its software is up to date and matches the equipment sensors. If not, the common platform 120 downloads and installs new software. In other words, Coburn discloses that the interface processor (common platform 120) updates **its own** software based on the types of equipment sensors 130 that are connected.

Coburn does not disclose that the equipment sensors 130 each include a processor, much less that the equipment sensors 130 each generate diagnostic information that indicates success of software installation, as claim 22 recites. Therefore, Coburn is silent with respect to **multiple vehicle processors each** adapted to generate diagnostic information indicating success of software installation on the **respective** vehicle processor.

SECOND FACTUAL DEFICIENCY

Neither Knight nor Coburn teaches or suggests using an interface processor to “identify software files stored on [a] portable memory device for each of [] multiple vehicle processors, [and] load the identified software files onto the multiple vehicle processors” as claim 22 recites.

The Examiner does not assert that Coburn teaches or suggests these limitations, and instead relies on Knight.

The Examiner asserts that paragraph [0190] of Knight teaches these limitations. In paragraph [0190], Knight discloses that a USB adapter 200 may have the capability of downloading software to a vehicle subsystem computer, where the vehicle subsystem computer may be an engine control computer or another type of vehicle management computer. However, Knight is silent with respect to the USB adapter 200 identifying software files for each of multiple vehicle processors. Simply disclosing that the USB adapter 200 may interface with multiple vehicle subsystem computers does not teach or suggest that the USB adapter 200 will itself perform any identifying function. Because Knight includes no mention of identifying which software files will be sent to

which vehicle subsystem computer, Knight could not teach or suggest loading identified software files onto the multiple vehicle processors, as claim 22 recites.

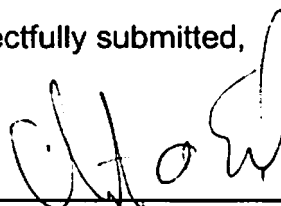
CONCLUSION

It is a longstanding rule that to establish a prima facie case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 143 (CCPA 1974). See MPEP § 2143.03. The combination of Knight and Coburn is deficient in either teaching or suggesting at least the limitations described above. For at least these reasons, Applicant respectfully asserts that claim 22 defines over the cited art. Independent claims 27 and 32 include similar limitations as claim 22 and are therefore in condition for allowance for at least similar reasons.

If the Examiner believes that personal communication will expedite prosecution, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

By:



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Dated: September 16, 2009

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